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CHARTER ORDINANCE NO. 217

AN ORDINANCE AMENDING SECTION 1 OF CHARTER ORDINANCE NO. 122, SECTION 1 OF CHARTER ORDINANCE NO. 204 AND SECTION 13 OF CHARTER ORDINANCE NO. 175, RELATING TO EXPUNGEMENTS AND REPEALING THE ORIGINALS OF SECTION 1 OF CHARTER ORDINANCE NO. 122, SECTION 1 OF CHARTER ORDINANCE NO. 204 AND SECTION 13 OF CHARTER ORDINANCE NO. 175.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA,  
KANSAS:

SECTION 1. Section 1 of Charter Ordinance No. 122 of the Code of the City of Wichita, Kansas, is hereby amended to read as follows:

"The City of Wichita, Kansas, a Council-Manager City of the first class, by the power vested in it by Article 12, Section 5, of the Constitution of the State of Kansas, hereby elects to exempt itself from, and makes inapplicable to it the provisions of K.S.A. 12-4112; 12-4203; 12-4410; 12-4411; and 1988 Supp. 12-4212, 12-4213, 12-4305, 12-4516 and 12-4516a; and amendments thereto, and provides substitute and additional provisions as hereinafter set forth in this ordinance. Such referenced provisions are either enactments or a part thereof which are applicable to this city, but are not applicable uniformly to all cities."

SECTION 2. Section 1 of Charter Ordinance No. 204 is hereby amended to read as follows:

**"Expungement.** (a) Except as provided in subsection (b, c, d, e and f), any person who has been convicted of a violation of an ordinance of the City of Wichita may petition the convicting court for the expungement of such conviction and related arrest records if three (3) or more years have elapsed since the person:

- (1) satisfied the sentence imposed, or
- (2) was discharged from probation, parole or a suspended sentence.

(b) Except as provided in subsections (c), (d), (e) and (f) any person who has fulfilled the terms of a diversion or deferred judgment agreement based on a violation of a city ordinance of the City of Wichita may petition the court for the expungement of such diversion or deferred judgment agreement and related arrest records if three or more years have elapsed since the terms of the diversion or deferred judgment agreement were fulfilled.

(c) No person may petition for expungement until five (5) or more years have elapsed since the person satisfied the sentence imposed or the terms of a diversion or deferred judgment agreement or was discharged from probation, parole, conditional release, or a suspended sentence, if such person was convicted of any of the following:

- (1) Driving while such person's privilege to operate a motor vehicle on the public highways of the State of Kansas has been suspended or revoked, as prohibited by Section 11.42.030(c) of the Code of the City of Wichita, Kansas, and amendments thereto,

(2) Failing to stop at the scene of an accident and perform the duties required by Section 11.12.010 through 11.12.050 of the Code of the City of Wichita, Kansas, and amendments thereto,

(3) Violating the provisions of Section 11.13.010 of the Code of the City of Wichita, Kansas, and amendments thereto, relating to motor vehicle liability Insurance coverage, or

(d) There shall be no expungement of convictions or diversions for violations of Section 11.38.155 of the Code of the City of Wichita.

(e) No person may petition for expungements until ten or more years have elapsed since the person satisfied the sentence imposed or the terms of the diversion agreement or was discharged from probation or a suspended sentence if such person was convicted of a violation of Section 11.38.150 of the Code of the City of Wichita.

(f) There shall be no expungements of any conviction or any part of the offender's criminal record for any offender who is required to register as provided by The Kansas Offender Registration Act, K.S.A. 22-4001, et seq., while the offender is required to register as provided in the Kansas Offender Registration Act.

(g) When a petition for expungement is filed, the court shall set a date for a hearing and shall cause notice of such hearing to be given to the

prosecuting attorney and the arresting law enforcement agency. The petition shall state:

- (1) the defendant's full name,
- (2) the full name of the defendant at the time of arrest, conviction, or diversion, if different than the defendant's current name,
- (3) the defendant's sex, race, and date of birth,
- (4) the crime for which the defendant was arrested, convicted, or diverted,
- (5) the date of the defendant's arrest, conviction, or diversion, and
- (6) the identity of the convicting court, arresting law enforcement agency or diverting authority.

The City of Wichita Municipal Court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section. Any person who may have relevant information about the petitioner may testify at the hearing. The court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with the Secretary of Corrections or the Kansas Parole Board.

(h) At the hearing on the petition, the court shall order the petitioner's arrest record, conviction, diversion or deferred judgment be expunged if the court finds:

(1) that the petitioner has not been convicted of a felony in the past two (2) years and no proceeding involving any crime is presently pending or be instituted against the petitioner,

(2) that the circumstances and behavior of the petitioner warrant the expungement, and

(3) that the expungement is consistent with the public welfare.

(i) When the court has ordered an arrest record, conviction diversion or deferred judgment expunged, the order of expungement shall state the information required to be contained in the petition. The clerk of the court shall send a certified copy of the order of expungement to the Kansas Bureau of Investigation, which shall notify the Federal Bureau of Investigation, the Secretary of Corrections, and any other criminal justice agency which may have a record of the arrest, conviction, diversion or deferred judgment. After the order of expungement is entered, the petitioner shall be treated as not having been arrested, convicted or diverted of the crime, except that:

(1) upon conviction for any subsequent crime, the conviction that was expunged may be considered as a prior conviction in determining the sentence to be imposed,

(2) the petitioner shall disclose that the arrest, conviction or diversion occurred if asked about previous arrests, convictions, or diversions:

(A) in any application for licensure as a private detective, private detective agency, certification as a firearms trainer pursuant to K.S.A. 2010 Supp. 75-7b21, and amendments thereto, or employment as a detective with a private detective agency, as defined by K.S.A. 75-7b01, and amendments thereto; as security personnel with a private patrol operator, as defined by K.S.A. 75-7b01 and amendments thereto, or with an institution as defined in K.S.A. 76-12a01 and amendments thereto, of the department of social and rehabilitation services,

(B) in any application for admission, or for an order of reinstatement to the practice of law in this state,

(C) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery,

(D) to aid in determining the petitioner's qualifications for executive director of the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in pari-mutuel racing as deemed appropriate by the executive director of the commission, to aid in determining qualifications for licensure or renewal of licensure by the commission,

(E) to aid in determining the petitioner's qualifications for the following under the Kansas expanded lottery act:

(i) Lottery gaming facility manager or prospective manager, racetrack gaming facility manager or prospective manager; licensee or certificate holder, or

(ii) an officer, director, employee, owner, agent or contractor thereof;

(F) upon application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto,

(G) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency,

(H) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact,

(I) in any application for registration as a broker-dealer, agent, investment adviser or investment adviser representative all as defined in K.S.A. 17-~~12a~~102 and amendments thereto,

(J) in any application for employment as a law enforcement officer, as defined in K.S.A. 22-2202 or 74-5602, and amendments thereto; or

(K) for applications to aid in determining the petitioner's qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act, K.S.A. 2010 Supp. 75-7c01, et seq., and amendments thereto.

(3) The Court, in the order of expungement, may specify other circumstances under which the arrest, conviction or diversion is to be disclosed, and

(4) The conviction may be disclosed in a subsequent prosecution for an offense which requires as an element of such offense a prior conviction of the type expunged;

(h) Whenever a person is convicted of an ordinance violation, pleads guilty and pays a fine for such a violation, or is placed on parole or probation or is granted a suspended sentence for such a violation, the person shall be informed of the ability to expunge the arrest records or conviction. Whenever a person enters into a diversion or deferred judgment agreement, the person shall be informed of the ability to expunge the diversion or deferred judgment;

(i) Subject to the disclosures required pursuant to subsection ~~(g)~~ (i), in any application for employment, license, or other civil right or privilege, or any appearance as a witness, a person whose arrest records, conviction, diversion or deferred judgment of an offense has been expunged under this ordinance may



state that such person has never been arrested, convicted or diverted of such offense;

(A) The court shall make all expunged records and related information in the court's possession, created prior to, on or after July 1, 2011 available to the Kansas Bureau of Investigation for the purposes of:

(1) Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701, et seq. and amendments thereto; or

(2) Providing information or documentation to the Federal Bureau of Investigation in connection with the national instant criminal background check system, to determine a person's qualifications to possess a firearm;

(j) Whenever the record of any arrest, conviction, diversion or deferred judgment has been expunged under the provisions of this section or under the provisions of any other existing or former statute, the custodian of the records of arrest, conviction, deferred judgment and incarceration relating to that crime shall not disclose the existence of such records, except when requested by:

(1) the person whose record was expunged;

(2) a criminal justice agency, private detective agency or a private patrol operator, and the request is accompanied by a statement that the request is being made in conjunction with an application for

employment with such agency or operator by the person whose record has been expunged;

(3) a court, upon showing of a subsequent conviction of the person whose record has been expunged;

(4) the secretary of social and rehabilitation services, or a designee of the secretary, for the purpose of obtaining information relating to employment in an Institution, as defined in K.S.A. 76-12a01 and amendments thereto, of the Department of Social and Rehabilitation Services of any person whose record has been expunged;

(5) a person entitled to such information pursuant to the terms of the expungement order;

(6) a prosecuting attorney, and such request is accompanied by a statement that the request is being made in conjunction with a prosecution of an offense that requires a prior conviction as one of the elements of such offense;

(7) the Supreme Court, the Clerk or Disciplinary Administrator thereof, the State Board for Admission of Attorneys or the State Board for Discipline of Attorneys, and the request is accompanied by a statement that the request is being made in conjunction with an application for admission or for an order for reinstatement to the practice of law in this state by the person whose record has been expunged;

(8) The Kansas lottery, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(9) the governor or the Kansas racing commission, or a designee of the commission, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for executive director of the commission, for employment with the commission, for work in sensitive areas in pari-mutuel racing as deemed appropriate by the executive director of the commission or for licensure, renewal of licensure or continued licensure by the commission;

(10) the state gaming agency, and the request is accompanied by a statement that the request is being made to aid in determining qualifications;

(A) To be an employee of the state gaming agency, or

(B) to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact, or

(11) the Kansas securities commissioner, or a designee of the commissioner, and the request is accompanied by a statement that the request is being made in conjunction with an application for registration as a broker-dealer, agent, investment adviser or investment adviser

representative by such agency and application was submitted by the person whose record has been expunged;

(12) the attorney general, and the request is accompanied by a statement that the request is being made to aid in determining qualifications for a license to carry a concealed weapon pursuant to the personal and family protection act;

(13) the Kansas sentencing commission;

(14) the Kansas commission on peace officers' standards and training and the request is accompanied by a statement that the request is being made to aid in determining certification eligibility as a law enforcement officer pursuant to K.S.A. 74-5601, et seq., and amendments thereto; or

(15) a law enforcement agency and the request is accompanied by a statement that the request is being made to aid in determining eligibility for employment as a law enforcement officer as defined by K.S.A. 22-2202, and amendments thereto."

SECTION 3. Section 13 of Charter Ordinance No, 175 is hereby amended to read as follows:

"SECTION 13. Expungement of Arrest Records. (1). For purposes of this section, 'expungement' means the sealing of records such that they are unavailable except to the petitioner and criminal justice agencies as provided by K.S.A. 22-4701, et seq. and amendments thereto and except as provided in this section.

(a) Any person who has been arrested on a violation of a violation of a city ordinance may petition the court for the expungement of such arrest record.

(b) When a petition for expungement is filed, the court shall set a date for hearing on such petition and shall cause notice of such hearing to be given to the prosecuting attorney and the arresting law enforcement agency. The petition shall state:

- (1) The petitioner's full name;
- (2) the full name of the petitioner at the time of arrest, if different than the petitioner's current name;
- (3) the petitioner's sex, race, and date of birth;
- (4) the crime for which the petitioner was arrested;
- (5) the date of the petitioner's arrest, and
- (6) the identity of the arresting law enforcement agency.

The municipal court may prescribe a fee to be charged as costs for a person petitioning for an order of expungement pursuant to this section.

(c) At the hearing on a petition for expungement, the court shall order the arrest record and subsequent court proceedings, if any, expunged upon finding:

- (1) The arrest occurred because of mistaken identity;

(2) a court has found that there was no probable cause for the arrest;

(3) the petitioner was found not guilty in court proceedings; or

(4) the expungement would be in the best interests of justice and

(A) Charges have been dismissed; or

(B) no charges have been or are likely to be filed.

(d) When the court has ordered expungement of an arrest record and subsequent court proceedings, if any, the order shall state the information required to be stated in the petition and shall state the grounds for expungement under subsection (c). The clerk of the court shall send a certified copy of the order to the federal bureau of investigation, the Kansas bureau of investigation, the secretary of corrections, and any other criminal justice agency which may have a record of the arrest. If an order of expungement is entered, the petitioner shall be treated as not having been arrested.

(e) If the ground for expungement is as provided in subsection (c)(4), the court shall determine whether, in the interest of public welfare, the records should be available for any of the following purposes:

(1) in any application for licensure as a private detective, private detective agency, certification as a firearms

trainer pursuant to K.S.A. 75-7b21 and amendments thereto; or employment as a private detective agency, as defined by K.S.A. 75-7b01 and amendments thereto; or with an institution as defined in K.S.A. 76-12a01 and amendments thereto of the department of social and rehabilitation services;

(2) in any application for admission, or for an order of reinstatement to the practice of law in this state;

(3) to aid in determining the petitioner's qualifications for employment with the Kansas lottery or for work in sensitive areas within the Kansas lottery as deemed appropriate by the executive director of the Kansas lottery;

(4) to aid in determining the petitioner's qualifications for executive director with the Kansas racing and gaming commission, for employment with the commission or for work in sensitive areas in pari-mutuel racing as deemed appropriate by the executive director of the commission, to aid in determining qualifications for licensure or renewal of licensure by the commission;

(5) in any application for a commercial driver's license under K.S.A. 8-2,125 through 8-2,142, and amendments thereto;

(6) to aid in determining the petitioner's qualifications to be an employee of the state gaming agency;

(7) to aid in determining the petitioner's qualifications to be an employee of a tribal gaming commission or to hold a license issued pursuant to a tribal-state gaming compact; or

(8) to aid in determining the petitioner's qualifications for the following under the Kansas Expanded Lottery Act

(9) for applications to carry concealed weapon;

(10) in any other circumstances which the court deems appropriate.

(f) Subject to the disclosures required pursuant to subsection (e), in any application for employment, license, or other civil right or privilege, or any appearance as a witness, a person whose arrest records have been expunged as provided in this section may state that such person has never been arrested.

The court shall make all expunged records and related information in the court's possession, created prior to, on or after July 1, 2011 available to the Kansas Bureau of Investigation for the purposes of:

(1) Completing a person's criminal history record information within the central repository in accordance with K.S.A. 22-4701, et seq. and amendments thereto; or

(2) Providing information or documentation to the Federal Bureau of Investigation in connection with the national instant criminal background check system, to determine a person's qualifications to possess a firearm;



(g) Whenever a petitioner's arrest records have been expunged as provided in this section, the custodian of the records of arrest, incarceration due to arrest or court proceedings related to the arrest, shall not disclose the arrest or any information related to the arrest, except as directed by the order of expungement or when requested by the person whose record was expunged."

SECTION 4. The originals of Section 1 of Charter Ordinance No. 122, Section 1 of Charter Ordinance No 204 and Section 13 of Charter Ordinance No. 175 are hereby repealed.

SECTION 5. This ordinance shall be published once a week for two consecutive weeks in the official city news paper.

SECTION 6. This is a Charter Ordinance and shall take effect sixty-one (61) days after final publication unless a sufficient petition for a referendum is filed and a referendum held on the ordinance as provided in Article 12, Section 5, Subdivision (c)(3) of the Constitution of the State of Kansas, in which case the ordinance shall become effective if approved by a majority of the electors voting thereon.

PASSED BY THE GOVERNING BODY, not less than two-thirds of the members elect voting in favor thereof, this 20th day of May, 2012.

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Carl Brewer, Mayor

ATTEST:

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Karen Sublett, City Clerk

Approved as to Form:

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Gary E. Rebenstorf  
City Attorney